

Message Text

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ACTION EB-08

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FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 5542

AMCONSUL CALGARY POUCH

AMCONSUL MONTREAL

AMCONSUL TORONTO POUCH

AMCONSUL WINNIPEG POUCH

AMCONSUL VANCOUVER POUCH

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E.O. 11652:N/A

TAGS: ETEL, CA

SUBJECT: SUPREME COURT DECISIONS ON CONTROL OF CABLE
TELEVISION IN QUEBEC AND COMMERCIAL DELETION

REF: OTTAWA 0404, FEB. 1, 1977

1. SUMMARY. CANADIAN SUPREME COURT ISSUED DECISIONS NOV.
30 ON TWO RELATED CABLE TELEVISION QUESTIONS. DECISIONS,
WHICH WERE BOTH SPLIT 6-3 WITH FRENCH CANADIAN JUDGES
DISSENTING, CONCERNED: (A) JURISDICTION OVER CABLE TELE-
VISION IN QUEBEC; THE COURT DECIDED THE FEDERAL GOVERNMENT
HAS EXCLUSIVE JURISDICTION OVER CABLE TRANSMISSION.
(B) DELETION OF COMMERCIALS FROM SIGNALS OF US STATIONS
RELAYED TO CANADIAN VIEWERS BY CABLE AS A MEANS TO
DISCOURAGE CANADIANS FROM ADVERTISING ON US STATIONS; THE
COURT UPHELD 1971 POLICY OF THE CANADIAN RADIO-TELEVISION
AND TELECOMMUNICATIONS COMMISSION (CRTC) ON DELETING
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COMMERCIALS AND DISMISSED AN APPEAL MADE BY THREE US
TELEVISION STATIONS OPERATING IN BUFFALO, NEW YORK. COPIES
OF THE COURT'S DECISIONS ARE BEING POUCHED TO DEPT (EB/TD).
END SUMMARY.

2. THE DECISION ON QUEBEC CABLE TV JURISDICTION CULMINATED
A FOUR-YEAR LEGAL PROCESS WHEN THE SUPREME COURT DECIDED

TO UPHOLD A QUEBEC COURT OF APPEAL DECISION THAT QUEBEC HAD EXCEEDED ITS CONSTITUTIONAL AUTHORITY IN 1972 WHEN A LAW WAS ENACTED GIVING THE PROVINCIAL GOVERNMENT REGULATORY AUTHORITY OVER CABLE TV SYSTEMS. AS NOTED IN PRESS REPORTS, THIS DECISION EFFECTIVELY ENDS LEGAL CHALLENGES TO FEDERAL CONTROL OVER CABLE TELEVISION FROM QUEBEC, ONTARIO, ALBERTA AND BRITISH COLUMBIA. HOWEVER, THE PRESS QUOTED A STATEMENT BY COMMUNICATIONS MINISTER SAUVE THAT SINCE THE COURT'S DECISION HAS SETTLED THE LEGAL ISSUE, POLITICAL COMPROMISE BETWEEN OTTAWA AND THE PROVINCES OVER CABLE TV CONTROL IS NOW IN ORDER.

3. THE COMMERCIAL DELETION ISSUE, ALSO DECIDED BY THE SUPREME COURT ON NOV. 30, IS RELATED TO THE ISSUE OF PROVINCIAL OR FEDERAL CONTROL OVER CABLE SYSTEMS. FOUR OF THE PROVINCES (QUEBEC, ONTARIO, BRITISH COLUMBIA AND ALBERTA) HAD INTERVENED IN THIS CASE IN SUPPORT OF THE BUFFALO STATIONS' CONTENTION THAT THE CRTC DID NOT HAVE AUTHORITY TO ISSUE ITS 1971 POLICY REQUIRING CANADIAN CABLE OPERATORS TO DELETE COMMERCIALS FROM US PROGRAMS THEY RELAY TO CANADIAN VIEWERS. THE COURT, ACTING ON MANY OF THE SAME CONSIDERATIONS CONTAINED IN THE QUEBEC CABLE CASE, FOUND THE CRTC WAS WITHIN ITS RIGHTS TO CONTROL THE DISTRIBUTION OF SIGNALS WITHIN CANADA EVEN THOUGH THOSE SIGNALS ORIGINATE OUTSIDE OF CANADA.

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4. THE DECISIONS ON BOTH OF THESE CASES WERE SPLIT 6-3 WITH THE THREE FRENCH CANADIAN JUDGES DISSENTING. COMMENTATORS HAVE ALREADY CALLED ATTENTION TO THIS SITUATION WHICH SEEMS TO BRING SEPARATIST POLITICS AND THE QUESTION OF NATIONAL UNITY INTO A DECISION BY CANADA'S HIGHEST COURT, THUS AT LEAST RAISING THE QUESTION OF THE IMPARTIALITY OF THAT BODY IN THE CONTINUING DEBATE BETWEEN OTTAWA AND QUEBEC ON SEPARATION.

5. COMMENT: THE COURT'S DECISION ON COMMERCIAL DELETION ESTABLISHES THE LEGALITY OF CRTC'S ORDER. HOWEVER, WE DO NOT EXPECT THAT THIS WILL AFFECT THE UNDERSTANDING WE HAVE WITH CANADA SET FORTH IN THE LETTER OF DEC. 23, 1976 REGARDING FURTHER IMPLEMENTATION OF COMMERCIAL DELETION. ENDERS

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